

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MARK A. NAVA

§
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§
§

vs.

CIVIL ACTION

CEM INSURANCE COMPANY

NO. _____

JURY

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

CEM Insurance Company (“CEM”), the Defendant herein, respectfully submits the following notice of removal.

I.

CEM is the Defendant in litigation now pending in the County Court at Law No. 10 of Bexar County, Texas, Cause No. 2020CV03138, styled “*Mark A. Nava v. CEM Insurance Company*.” The suit filed against CEM is a civil action seeking recovery of underinsured motorist benefits under a contract of personal auto insurance, as well as a claim for breach of contract and a claim for attorney’s fees under the Texas Declaratory Judgment Act.¹

II.

Both at the time of the filing of Plaintiff’s Original Petition and at the time of the filing of this Notice of Removal, Plaintiff was, is, and continuously has been a citizen of the State of Texas

¹ CEM has not been actually served with citation in connection with Plaintiff’s lawsuit. Instead, Plaintiff apparently served the citation for CEM on a CPA in Euless, Texas, who was alleged to be the registered agent for CEM, but who is not in fact CEM’s registered agent and who has no connection whatsoever with CEM. CEM became aware of the lawsuit, however, and has already filed an appearance in the state court suit and is timely filing this Notice of Removal within 30 days of the improper service on someone who is not a registered agent for CEM.

with his place of residence in the state of Texas. Both at the time of filing Plaintiff's Original Petition and at the time of the filing of this Notice of Removal, Defendant was, is, and continuously has been a corporation organized and existing under the laws of the State of Illinois and having its principal place of business in the State of Illinois. Thus, Defendant is a corporate citizen of the State of Illinois.

III.

The amount in controversy in this matter, exclusive of interest and costs, exceeds the sum or value of \$75,000, as evidenced by Plaintiff's allegation at page 2, numbered paragraph III of Plaintiff's Original Petition, which reads: "Plaintiff states that he seeks monetary relief over one hundred thousand dollars (\$100,000.00) but no more than two hundred thousand dollars (\$200,000.00)."

Plaintiff has not affirmatively plead an amount in controversy less than \$75,000. Moreover, an analysis of the Plaintiff's claims demonstrates that the damages sought, including the claim for attorney's fees, more likely than not places the amount in controversy above the jurisdictional minimum, as Plaintiff has expressly alleged.

Plaintiff seeks recovery of damages arising from a motor vehicle accident that occurred on July 22, 2018, in San Antonio, Texas. Plaintiff alleged that, as a result of the collision, he "sustained serious injuries and damages, the value of which exceeded the liability policy limits of the Third Party, Monica Pena Lucio." *Plaintiff's Original Petition*, p. 3, ¶ V. After settling with Ms. Lucio's liability insurer for the limits of her liability policy, Plaintiff sought – and seeks – the recovery of the balance of his damages from Defendant CEM, including the "full value of his underinsured benefits." *Id.* at p. 4. Plaintiff has sued for the UIM benefits under the contract of

insurance and for breach of contract, pursuant to which he “seeks damages for such breach, including actual damages, consequential damages, attorneys’ fees, prejudgment interest, litigation expenses, and costs of court.” *Id.* at p. 5, ¶ VII. In addition, Plaintiff seeks recovery of attorney’s fees under Chapters 37 and 38 of the Texas Civil Practice & Remedies Code. *Id.* and at ¶ VIII.

IV.

This Court has jurisdiction and this action is properly removable based upon diversity of citizenship under 28 U.S.C. §1332, et seq. Pursuant to 28 U.S.C. § 1664, Defendant has removed this action to this Court within the time specified by law.

V.

Attached hereto are (1) an index of all attached documents, (2) a copy of the Docket Sheet in the State Court action, (3) all executed process, (4) all pleadings (excluding discovery material) filed in the State Court action, Cause No. 2020CV03138, in the County Court at Law No. 10 of Bexar County, Texas, including any Orders signed by the state judge, and (5) a complete list of all counsel of record in the action.

PRAYER FOR RELIEF

Wherefore, premises considered, CEM Insurance Company prays that the action now pending in the County Court at Law No. 10 of Bexar County, Texas be removed to this, the United States District Court for the Western District of Texas, San Antonio Division.

Respectfully submitted,

BY: 

Michael A. Hummert

Lead Attorney

State Bar No. 10272000

mhummert@ekvallbyrne.com

EKVALL & BYRNE, LLP

4450 Sigma Road, Suite 100

Dallas, Texas 75244

TELEPHONE (972) 239-0839

FACSIMILE (972) 960-9517

ATTORNEYS FOR DEFENDANT
CEM INSURANCE COMPANY

CERTIFICATE OF SERVICE

On August 19, 2020, I electronically submitted the foregoing document with the clerk of court of the U.S. District Court, Western District of Texas, using the electronic case files system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).



MICHAEL A. HUMMERT

**ALL PROCESS, PLEADINGS and ORDERS
PREVIOUSLY SERVED UPON DEFENDANT
AND DEFENDANT'S ANSWER
IN
CAUSE NO. 2020CV03138
Mark A. Nava
vs.
*CEM Insurance Company***

**IN THE COUNTY COURT AT LAW NO. 10
OF BEXAR COUNTY, TEXAS**

♦♦♦

- A. Copy of Civil Docket Sheet from Bexar County County Clerk for Cause No. 2020CV03138
- B. Plaintiff's Original Petition filed June 15, 2020
- C. Defendant's Original Answer filed August 14, 2020

EXHIBIT A



COUNTY CLERK & DISTRICT CLERK COURT RECORDS SEARCH

Case #2020CV03138

Name: MARK A NAVA

Date Filed : 6/15/2020

Case Status : PENDING

Litigant Type : PLAINTIFF

Court : 010

Docket Type : AUTO DAMAGES & PERS. INJURY

Business Name : 2020CV03138

Style : MARK A NAVA

Style (2) : vs CEM INSURANCE COMPANY

Case History

Currently viewing all records

Sequence	Date Filed	Description
P00005	8/14/2020	ANSWER/RESPONSE DEFENDANT'S ORIGINAL ANSWER
P00004	7/29/2020	NO FEE DOCUMENTS RETURN OF SERVICE-CEM INSURANCE CO
S00001	6/17/2020	CITATION CEM INSURANCE COMPANY ISSUED: 6/17/2020 RECEIVED: 6/7/2020 EXECUTED: 7/22/2020 RETURNED: 7/29/2020
P00003	6/17/2020	REQUEST CITATION SERVICE REQUEST
P00002	6/15/2020	CITATION SERVICE REQUEST
P00001	6/15/2020	PLAINTIFF ORIGINAL PETITION REQUEST FOR DISCLOSURE AND INITIAL DISCOVERY

EXHIBIT B

E-FILED
Bexar County, County Clerk
Lucy Adame-Clark
Submission Date: 6/15/2020 12:40 PM
Accepted Date: 6/15/2020 3:45 PM
Accepted By: Halley Cho
/s/ Halley Cho
Deputy Clerk

CAUSE NO. 2020CV03138

MARK A. NAVA § IN THE COUNTY COURT
vs. § CC# 10
§ AT LAW NO. ____
CEM INSURANCE COMPANY § BEXAR COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION, JURY DEMAND, REQUEST
FOR DISCLOSURE AND INITIAL DISCOVERY**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, MARK A. NAVA, Plaintiff, in the above-styled and numbered cause, and files this his *Original Petition, Jury Demand, Request for Disclosure, and Initial Discovery*, complaining of CEM INSURANCE COMPANY, Defendant herein, and for cause of action would respectfully show unto this Honorable Court as follows:

I.
DISCOVERY CONTROL PLAN LEVEL

Pursuant to Rule 190.1, TEXAS RULES OF CIVIL PROCEDURE, discovery is intended to be conducted under Level 3 of this Rule.

II.
PARTIES

Plaintiff, MARK A. NAVA, is a natural person residing in San Antonio, Bexar County, Texas.

Defendant, CEM INSURANCE COMPANY (hereafter referred to as Defendant "CEM INSURANCE COMPANY"), is an insurance company registered with the Texas Department of Insurance and is authorized to conduct business in the State of Texas. This Defendant may be served with process by serving its registered agent **Lawrence J. Beardsley CPA, Inc., 910 N Main Street, Suite C, Euless, Texas 76039**. ISSUANCE and SERVICE of citation is requested over this defendant at this time.

III.
JURISDICTION AND VENUE

This Court has jurisdiction over Defendant CEM INSURANCE COMPANY in that it is deemed a citizen of the State of Texas pursuant to 28 USC Section 1332.(c)(1)(a). Venue is proper in this Court in that all or a substantial part of the events or omissions giving rise to this claim occurred in Bexar County, Texas.

Plaintiff believes that the evaluation of damages is uniquely within the purview of the jury, however, as required by Rule 47 of the Texas Rules of Civil Procedure, Plaintiff states that he seeks monetary relief over one hundred thousand dollars (\$100,000.00) but no more than two hundred thousand dollars (\$200,000.00).

IV.
GENERAL STATEMENT OF THE CASE

Plaintiff, MARK A. NAVA, seeks a declaration to establish the prerequisites to recovery under the provisions of an automobile insurance policy provided by Defendant and which included supposed protection for recovery of damages in the event of a collision with an uninsured or underinsured third-party driver. Specifically, Plaintiff seeks a declaration under TRCP Chapter 37, the Uniform Declaratory Judgment Act ("UDJA"), that Plaintiff is entitled to recover from Defendant, for damages resulting from the motor vehicle collision with a third-party driver that are beyond the damages already recovered from the third-party driver, that those damages fall within the coverage afforded Plaintiff under the automobile insurance policy Defendant was paid for, and specifying the amount of damages, attorney fees, interest, and

court costs that Defendant is obligated to pay.¹

V.
FACTUAL BACKGROUND

On or about July 22, 2018, Plaintiff was in a motor vehicle collision with Monica Pena Lucio (herein after called "Third Party") in San Antonio, Bexar County, Texas, wherein he sustained personal injuries. At all times material hereto, Monica Pena Lucio was an "underinsured motorist" as that term is defined by a UIM policy issued to Plaintiff, MARK A. NAVA. As a result of the collision, Plaintiff sustained serious injuries and damages, the value of which exceeded the liability policy limits of the Third Party, Monica Pena Lucio. As a result, the Third Party insurer tendered the limits of her liability policy. Prior to accepting those limits, Plaintiff received permission from Defendant CEM INSURANCE COMPANY to accept said limits without prejudice to his right to pursue his benefits under the under-insured motorist provision of policy number PRAFT A901-02. After receiving permission from Defendant CEM INSURANCE COMPANY to accept the third party's limits of liability, Plaintiff sought the recovery of the balance of his damages from Defendant CEM INSURANCE COMPANY. Defendant CEM INSURANCE COMPANY wrongfully and without good reason denied

¹ As the Fourth Court of Appeals recently explained in its August 21, 2019 opinion in *Allstate Ins. Co. v. Irwin*, No. 04-18-00293, to protect responsible motorists from financial loss when they are involved in car wrecks with uninsured or underinsured motorists (UM/UIM), Texas law requires automobile insurers such as Defendant to include UM/UIM coverage in their policies unless their insureds reject that coverage in writing (which Plaintiff did *not* here). Tex. Ins. Code Ann, Section 1952.101(b); *Ortiz v. State Fin. Mut. Auto Ins. Co.* 955 S.W.2d, 353, 356-57 (Tex. App.—San Antonio 1997, writ denied). UM/UIM coverage provides payment to the insured for all amounts the insured is "legally entitled to recover" as damages from the UM/UIM. Tex. Ins. Code. Ann., Section 1952.106. Recovery is reduced by the amount recovered or recoverable from the insurer of the UM/UIM's vehicle and cannot exceed the insured's policy limits. *Id.* The UDJA is designed "to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." Tex. Civ. Prac. & Rem. Code Ann., Section 37.002(b). It authorizes a person interested under a written contract to "obtain a declaration of rights, status or other legal relations thereunder." *Id.*, Section 37.004(a). The Legislature mandates that "it is to be liberally construed and administered." *Id.*, Section 37.002(b). The UDJA gives trial courts discretion to award equitable and just attorney's fees without regard to whether the recipient is the prevailing party. *Id.*, Section 37.009. As the Fourth Court of Appeals held in *Irwin*, ". . . an insured may use the UDJA to establish the prerequisites to recovery in a UM/UIM claim." *Allstate Ins. Co. v. Irwin*, No. 04-18-00293.

Plaintiff the full value of his underinsured benefits. Plaintiff subsequently brought this suit to recover the full measure of his damages.

VI.
THIRD-PARTY DRIVER'S NEGLIGENCE

On the occasion in question, the third-party driver operated an automobile in a negligent manner and violated the duty owed to Plaintiff to exercise ordinary care in the operation of said motor vehicle by failing to keep a proper lookout and failing to apply her brakes to avoid the collision. Those acts or omissions constituted negligence proximately causing Plaintiff's injuries and damages.

VII.
FIRST CAUSE OF ACTION AGAINST DEFENDANT
FOR UIM BENEFITS: BREACH OF CONTRACT

At the time of the incident made the basis of this lawsuit, Plaintiff carried a policy of insurance with Defendant CEM INSURANCE COMPANY, which contained provisions to provide for damages in whole or part by an underinsured driver. Monica Pena Lucio was an underinsured driver as those terms are defined under the relevant policy. Plaintiff further alleges that the vehicle operated by the driver at the time of the subject collision was an underinsured motor vehicle, as the term is defined under Texas Law.

Plaintiff has fully complied with all the terms of the insurance policy issued by Defendant CEM INSURANCE COMPANY as a condition precedent to bringing this suit. Despite Plaintiff's compliance with the terms and provisions of the policy, Defendant CEM INSURANCE COMPANY has failed to pay benefits due under the policy provisions.

The acts and/or omissions of Defendant CEM INSURANCE COMPANY constitute a breach of the provisions and terms, outlined in the insurance policy, executed between the Plaintiff and Defendant CEM INSURANCE COMPANY. Plaintiff has satisfied all conditions

precedent to the fulfillment of his contractual demands. Accordingly, Plaintiff brings an action for breach of contract against Defendant CEM INSURANCE COMPANY pursuant to Texas statutory and common law, including TEXAS CIVIL PRACTICE & REMEDIES CODE Chapter 38, and seeks damages for such breach, including actual damages, consequential damages, attorneys' fees, prejudgment interest, litigation expenses, and costs of court.

VIII.

**SECOND CAUSE OF ACTION AGAINST DEFENDANT
FOR UIM BENEFITS: DECLARATORY JUDGMENT**

Therefore, Plaintiff now seeks a declaratory judgment, pursuant to TRCP Chapter 37, that Plaintiff is entitled to recover from Defendant for damages resulting from the motor vehicle collision with the Third Party, that those damages fall within the coverage afforded to Plaintiff under the automobile insurance policy Defendant CEM INSURANCE COMPANY was paid for, and specifying the amount of damages, attorney fees, interest, and court costs that Defendant CEM INSURANCE COMPANY is obligated to pay.

IX.

CONSENT TO SETTLE

Plaintiff obtained a written consent from Defendant CEM INSURANCE COMPANY dated May 3, 2019, authorizing Plaintiff to settle the claim against Monica Pena Lucio for \$30,000.00.

X.

CLAIM FOR CONTRACTUAL BENEFITS UNDER PLAINTIFF'S POLICY

As a direct and proximate result of the Third Party's negligent conduct and because there was not enough liability coverage available to him, Plaintiff is legally entitled to his contractual benefits under his underinsured policy for his damages. Plaintiff suffered bodily injury damages as a result of the subject motor vehicle collision and Plaintiff is a covered person, under the

underinsured policy carried with Defendant CEM INSURANCE COMPANY. Pursuant to the underinsured policy, Plaintiff seeks monetary benefits due under the subject underinsured policy and a judicial determination of the damages proximately caused by the subject collision which Defendant CEM INSURANCE COMPANY must contractually pay to Plaintiff under the underinsured policy.

XI. DAMAGES

As a direct and proximate result of the Third Party's negligence, Plaintiff suffered bodily injuries. Some of these injuries may be permanent and may abide with Plaintiff for a long time in the future, if not for his entire life. As a further result of the nature and consequences of his injuries, Plaintiff has suffered physical and mental pain, suffering and anguish, and in all reasonable probability will continue to suffer in this manner for a long time into the future, if not for the balance of his natural life.

As a result, Plaintiff has sustained, and in all reasonable probability will sustain, the following damages for which he now sues:

- a) Past reasonable and necessary medical expenses. These expenses were incurred by Plaintiff for the necessary care and treatment of the injuries resulting from the accident complained of herein and such charges are reasonable and were usual and customary charges for such services;
- b) Reasonable and necessary medical expenses which, in all reasonable medical probability, will be incurred in the future;
- c) Physical pain and suffering in the past;
- d) Physical pain and suffering which, in all reasonable medical probability, will be incurred in the future;
- e) Physical impairment in the past;
- f) Physical impairment which, in all reasonable probability, will be suffered in the future;
- g) Loss of earnings/earning capacity in the past;
- h) Loss of earning capacity which, in all probability, will be incurred in the future;
- i) Mental anguish in the past; and
- j) Mental anguish in the future.

Plaintiff also seeks to recover punitive damages, prejudgment interest, post-judgment interest and court costs. Plaintiff's damages exceed the Court's jurisdictional minimum.

XII.
ATTORNEY'S FEES

As a result of Defendant's actions complained of in this Petition, Plaintiff was required to engage the services of the DAVIS LAW FIRM. Pursuant to the Texas Civil Practice and Remedies Code, Plaintiff hereby makes this written presentment of Plaintiff's claim for attorney fees, for which Plaintiff seeks reimbursement.

XIII.
REQUESTS FOR DISCLOSURE

Pursuant to Rule 194, Defendant, CEM INSURANCE COMPANY, is requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (a) through (I) of the Texas Rules of Civil Procedure.

XIV.
ATTACHED DISCOVERY

Plaintiff attaches his First Set of Interrogatories and Requests for Production to Defendant. Pursuant to TEX.R.CIV.P. 197.2(a) and 196.2(a), Plaintiff specifies that the answers shall be served on the first business day after the expiration of fifty (50) days from the date of service of these questions, and that the questions and your sworn answers to them may be offered in evidence at the trial of the lawsuit.

XV.
NOTICE TO USE DOCUMENTS PRODUCED IN DISCOVERY

Plaintiff hereby gives notice pursuant to TEX.R.CIV.P. 193.7 of his intent to use all documents produced by all parties at the time of trial, including all responses and documents

produced pursuant to depositions upon written questions directed to medical providers seeking the production of medical and/or billing records.

XVI.
JURY DEMAND

Pursuant to Texas Rules of Civil Procedure 216, Plaintiff hereby requests a trial by jury and tenders the requisite fee.

XVII.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited in terms of law to appear and answer herein, that upon final trial and hearing hereof, that Plaintiff recovers damages in accordance with the evidence, that Plaintiff recovers costs of court herein expended, that Plaintiff recovers interest to which Plaintiff is justly entitled under the law, and for such other further relief, both general and special, both in law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

DAVIS LAW FIRM
10500 Heritage Boulevard, Suite 102
San Antonio, Texas 78216
Telephone: (210) 444-4444 ext. 1510
Direct Line: (210) 870-1476
Facsimile: (210) 870-1493

BY: /s/ Jorge A. Tuckler
JORGE A. TUCKLER
State Bar No. 00794757
jorget@davislaw.com

ATTORNEY FOR PLAINTIFF

EXHIBIT C

E-FILED

Bexar County, County Clerk

Lucy Adame-Clark

Submission Date: 8/14/2020 10:40 AM

Accepted Date: 8/14/2020 10:53 AM

Accepted By: Mayra Castaneda

Deputy Clerk

CAUSE NO. 2020CV03138

MARK A. NAVA

§ IN THE COUNTY COURT

vs.

§ AT LAW NO. 10

CEM INSURANCE COMPANY

§ BEXAR COUNTY, TEXAS

DEFENDANT'S ORIGINAL ANSWER

TO SAID HONORABLE COURT:

CEM Insurance Company (“CEM”), the Defendant herein, files this, its Original Answer to Plaintiff’s Original Petition and would respectfully show unto the Court as follows:

GENERAL DENIAL**I.**

Subject to such stipulations and admissions as may be hereafter made, Defendant CEM hereby enters a general denial, as is permitted by Rule 92 of the Texas Rules of Civil Procedure.

Special Exception**II.**

Defendant specially excepts and objects specifically to the allegations in Paragraphs IV, VII, VIII and XII of Plaintiff’s Original Petition wherein the Plaintiff seeks recovery of attorney’s fees in this action to determine whether he is entitled in the first place to recover UIM benefits. While Plaintiff in his Petition purports to seek attorney’s fees under the Declaratory Judgment Act, Defendant would show that Plaintiff as a matter of law is not entitled to recover attorney’s fees from the insurer in this UM/UIM case, where there has been no breach of contract and there is presently no just amount owed. As set forth below, it is well settled law in Texas that a UM/UIM insurer such as CEM has no duty under its policy to pay benefits under the UM/UIM coverage portion of its policy until the insured obtains a judgment establishing the liability of the

alleged underinsured motorist and the Plaintiffs' damages. *See, Brainard v. Trinity Universal Ins. Co.*, 216 S.W.3d 809 (Tex. 2006), where the court reaffirmed that the language "legally entitled to recover" as set forth in the UM/UIM statute (and in the personal auto policy) means that the insurer is under no contractual duty to pay UM/UIM benefits until the insured obtains a judgment establishing the liability and underinsured status of the other motorist. Because no such judgment has been obtained in the instant case, the insurer's duty to pay has not yet been triggered; hence, there has been as a matter of law no breach of contract and there is no just amount owed. As the Texas Supreme Court also held in the *Brainard* case, *supra*, attorney's fees are not recoverable in a UM/UIM claim under Chapter 38 of the Texas Civil Practice & Remedies Code or any other theory. As the Texas Supreme Court reaffirmed in the companion case of *State Farm Mut. Auto Ins. Co. v. Norris*, 216 S.W.3d 819 (Tex. 2006), "An insured may recover attorney's fees under Chapter 38 only if the insurer does not tender the UIM benefits within 30 days after the trial court signs a judgment establishing the liability and underinsured status of the other motorist." *Id.* at 822. Accord, see *State Farm Mut. Auto Ins. Co. v. Nickerson*, 216 S.W.3d 823 (Tex. 2006).

Because no such judgment has been obtained in the instant case, there has been as a matter of law no breach of contract and there is presently no just amount owed. Therefore, Plaintiff can have no valid claim for attorney's fees, under the Declaratory Judgment Act, or otherwise. Accordingly, all allegations relating to a claim for attorney's fees should be stricken from Plaintiff's Original Petition. Of this special exception, Defendant prays judgment of the court.

Verified Denials

III.

Pleading further, Defendant denies that Plaintiff has complied with all conditions precedent to payment of his claim for Uninsured/Underinsured Motorist benefits under the subject policy of insurance. Specifically, it is well-settled law in Texas that an uninsured motorist insurer such as CEM has no duty under its policy to pay benefits under the UM/UIM coverage portion of its policy until the insured obtains a judgment establishing the liability of the alleged underinsured motorist and the Plaintiff's damages. Because no such judgment has been obtained in the instant case, the liability of the insurer to pay UM/UIM benefits has not yet been triggered. Consequently, Plaintiff as a matter of law can have no claim for breach of contract based on the alleged failure to pay benefits that are not presently owed.

Affirmative Defenses

IV.

Pleading further, and in the alternative, Defendant alleges that the conduct of Plaintiff proximately caused or proximately contributed to cause the Plaintiff's alleged damages and injuries. In this connection, Defendant affirmatively alleges the doctrine of comparative responsibility under Chapter 33 of the Texas Civil Practice & Remedies Code.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant CEM Insurance Company requests judgment of the Court as follows:

1. That Plaintiff take nothing of and from this Defendant;
2. That Defendant recover its costs, together with its attorney's fees and all such other and further relief to which it may be justly entitled.

Respectfully submitted,

EKVALL & BYRNE, LLP

By: 

Michael A. Hummert
State Bar No. 10272000
mhummert@ekvallbyrne.com
Ignacio Barbero
State Bar No. 00796162
ibarbero@ekvallbyrne.com
4450 Sigma Road, Suite 100
Dallas, Texas 75244
Telephone: (972) 239-0839
Facsimile: (972) 960-9517

ATTORNEYS FOR DEFENDANT
CEM INSURANCE COMPANY

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing instrument was e-served on counsel of record in accordance with the Texas Rules of Civil Procedure on this 11th day of August, 2020.

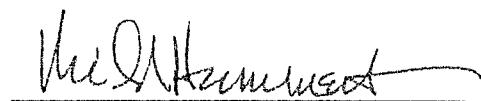

MICHAEL A. HUMMERT

VERIFICATION

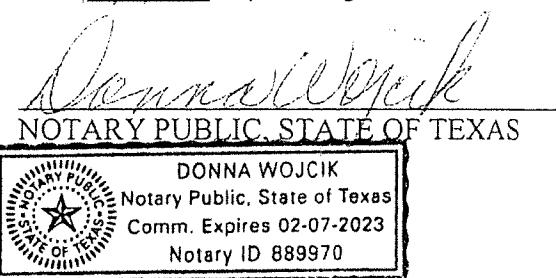
STATE OF TEXAS §

COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared Michael A. Hummert, known to me, who being by me duly sworn upon oath deposed and stated that he is over eighteen (18) years of age, is of sound mind, is fully competent to make this affidavit, that he is attorney of record for Defendant CEM Insurance Company, and that the statements contained in Paragraph III of the foregoing instrument are, on information and belief, true and correct.


Michael A. Hummert

SUBSCRIBED AND SWORN TO before me this 14th day of August, 2020.



JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS MARK A. NAVA		DEFENDANTS CEM Insurance Company			
(b) County of Residence of First Listed Plaintiff <u>BEXAR</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>		County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i>			
(c) Attorneys (Firm Name, Address, and Telephone Number) Jorge A. Tuckler, Davis Law Firm 10500 Heritage Blvd., Ste. 102, San Antonio Texas 78216 Phone: 210-870-1476		Attorneys (<i>If Known</i>) Michael A. Hummert, Ekvall & Byrne 4450 Sigma Road, Suite 100, Dallas, Texas 75244 Phone: 972-239-0839			
II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i>		III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i>			
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i>	Citizen of This State <input checked="" type="checkbox"/> PTF <input type="checkbox"/> DEF	Incorporated or Principal Place of Business In This State <input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF		
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>	Citizen of Another State <input type="checkbox"/> PTF <input type="checkbox"/> DEF	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF		
		Citizen or Subject of a Foreign Country <input type="checkbox"/> PTF <input type="checkbox"/> DEF	Foreign Nation <input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF		
IV. NATURE OF SUIT <i>(Place an "X" in One Box Only)</i>					
CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
	<input checked="" type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 410 Antitrust
	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
	<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 360 Other Personal Injury	LABOR	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 480 Consumer Credit
	<input type="checkbox"/> 160 Stockholders' Suits			<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 730 Other Personal Property	<input type="checkbox"/> 850 Securities/Commodities Exchange	
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 890 Other Statutory Actions	
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 891 Agricultural Acts	
			<input type="checkbox"/> 760 Other Labor Litigation	<input type="checkbox"/> 893 Environmental Matters	
			<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 895 Freedom of Information Act	
			<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 896 Arbitration	
				<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision	
REAL PROPERTY	CIVIL RIGHTS		SOCIAL SECURITY		
	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 861 HIA (1595ff)	<input type="checkbox"/> 890 Other Statutory Actions	
	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts	
	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 893 Environmental Matters	
	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act	
	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 896 Arbitration	
	<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other		<input type="checkbox"/> 899 Administrative Procedure	
		<input type="checkbox"/> 448 Education		<input type="checkbox"/> Act/Review or Appeal of Agency Decision	
				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
				<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
V. ORIGIN <i>(Place an "X" in One Box Only)</i>		FEDERAL TAX SUITS			
<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify) _____	
				<input type="checkbox"/> 6 Multidistrict Litigation	
		Cite the U.S. Civil Statute under which you are filing <i>(Do not cite jurisdictional statutes unless diversity)</i> : 28 USC § 1332			
VI. CAUSE OF ACTION		Brief description of cause: Claim for UIM benefits, breach of contract and declaratory judgment			
VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	DEMANDS \$	CHECK YES only if demanded in complaint JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
VIII. RELATED CASE(S) IF ANY		(See instructions): JUDGE DOCKET NUMBER			
DATE	SIGNATURE OF ATTORNEY OF RECORD <i>[Signature]</i>				
FOR OFFICE USE ONLY					
RECEIPT #	AMOUNT	APPLYING IFFP	JUDGE	MAG. JUDGE	

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
San Antonio DIVISION

Supplement to JS 44 Civil Cover Sheet
Cases Removed from State District Court

This form must be filed with the Clerk's Office no later than the **first business day** following the filing of the Notice of Removal. Additional sheets may be used as necessary.

The attorney of record for the removing party **MUST** sign this form.

STATE COURT INFORMATION:

1. Please identify the court from which the case is being removed; the case number; and the complete style of the case.

Cause No. 2020CV03138
Mark A. Nava v. CEM Insurance Company
In the County Court at Law No. 10
Bexar County, Texas

2. Was jury demand made in State Court? Yes No

If yes, by which party and on what date?

Mark Nava 06-15-2020
Party Name Date

STATE COURT INFORMATION:

1. List all plaintiffs, defendants, and intervenors still remaining in the case. Also, please list the attorney(s) of record for each party named and include the attorney's firm name, correct mailing address, telephone number, and fax number (including area codes).

Mark A. Nava Jorge A. Tuckler (SB #00794757)
Plaintiff Davis Law Firm
10500 Heritage Boulevard, Suite 102
San Antonio, Texas 78216
Phone: 210-870-1476 Fax: 210-870-1493

2. List all parties that have not been served at the time of the removal, and the reason(s) for non-service.

Not Applicable

3. List all parties that have been non-suited, dismissed, or terminated, and the reason(s) for their removal from the case.

Not Applicable

COUNTERCLAIMS, CROSS-CLAIMS, and/or THIRD-PARTY CLAIMS:

1. List separately each counterclaim, cross-claim, or third-party claim still remaining in the case and designate the nature of each such claim. For each counterclaim, cross-claim, or third-party claim, include all plaintiffs, defendants, and intervenors still remaining in the case. Also, please list the attorney(s) of record for each party named and include the attorney's firm name, correct mailing address, telephone number, and fax number (including area codes).

Not Applicable

VERIFICATION:


Attorney for Removing Party

8-19-20

Date

CEM INSURANCE COMPANY
Party/Parties

(NOTE: Additional comment space is available on page 3)

ADDITIONAL COMMENTS (As necessary):

STATE COURT INFORMATION, Continued

CEM Insurance Company
Defendant

Michael A. Hummert (SB #10272000)
Ekvall & Byrne, LLP
4450 Sigma Road, Suite 100
Dallas, Texas 75244
Phone: 972-239-0839
Fax: 972-960-9517